

**Re-Opening Irvine Lake**  
**A Win-Win for Taxpayers and Outdoor**  
**Enthusiasts**



**GRAND JURY 2018-2019**

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## **SUMMARY**

The Grand Jury has determined the cause of the closure of Irvine Lake to the public in 2016, and why it remains closed. As of the end of 2018, it has remained closed; however, in 2019 there is reason for optimism on multiple fronts. This report from the Grand Jury intends to provide useful background for interested residents of Orange County as to the specific interests and driving factors of the three public agencies involved. This report also will provide some insight on the sequence of legal issues to be resolved. The Grand Jury intends to provide a possible road map to a successful resolution of the outstanding issues among the parties.

Irvine Lake is the largest fresh water body in Orange County. Since 1941, the lake has provided the residents of Orange County with a unique opportunity for a variety of recreational activities. In 2014, The Irvine Company made public its intention to transfer certain land parcels it owned surrounding Irvine Lake to Orange County in perpetuity for the benefit of its residents. The land transfer triggered a series of negotiations among, primarily, Orange County Parks, Serrano Water District and Irvine Ranch Water District, seeking agreements on certain matters to move the action forward. Those negotiations stalled and in March 2016, Irvine Lake was closed to the public for fishing, boating and other water recreation. This closure has and continues to result in lost revenues for Orange County taxpayers in addition to lost recreation for its residents.

Finally, there is good reason to believe that Irvine Lake and the property transferred to Orange County by The Irvine Company will once again provide residents with a unique recreational experience. Further, the involvement of the Orange County Parks in the future of Irvine Lake has the potential to make the recreational land and water experiences at the Irvine Lake area property better and more varied than ever before.

## **REASON FOR THE STUDY**

The three public agencies involved in the future operations of Irvine Lake have not announced a plan for its reopening for recreation use since its closure in 2016. The Grand Jury examined the reasons that the lake remains closed.

Irvine Lake has provided recreation opportunities to the residents of Orange County since 1941. In 2014, The Irvine Company (TIC) agreed to dedicate 2,500 acres surrounding Irvine Lake to the residents of Orange County to enjoy as permanent open space. This dedication required an agreement between the two water districts actively involved in the management of Irvine Lake regarding access to Irvine Lake and future recreation rights: Serrano Water District (SWD) and Irvine Ranch Water District (IRWD). Orange County Parks (OC Parks) would be the governmental agency responsible for restoring and maintaining the newly dedicated public land, and in consideration would receive TIC's interest in water recreation rights at Irvine Lake, plus additional adjacent land parcels (see Appendix, Exhibit 1); therefore, OC Parks would need to be a party to any new agreement(s).

The three primary parties (SWD, IRWD and OC Parks) began negotiations in 2014 but by early 2016 had failed to make any real progress. This impasse resulted in a termination in March 2016 of the existing agreement between TIC and SWD with respect to recreation rights. Irvine Lake has remained closed to the public for water recreation through the balance of 2016 until the present.

Given the historic importance of Irvine Lake for water recreation to Orange County residents, the continued lack of progress in the negotiations between the relevant government agencies, and a general lack of understanding of the underlying issues by the residents of Orange County, the 2018-2019 Orange County Grand Jury (Grand Jury) elected to conduct an investigation, employing its particular powers to gather information, for the benefit of Orange County residents. The report will describe interagency dynamics that have resulted in the current impasse among SWD, IRWD and OC Parks with respect to the reopening of Irvine Lake. The Grand Jury will investigate methods for improving those dynamics to allow for the successful resolution of negotiations and reopening of Irvine Lake.

## **METHOD OF STUDY**

The Grand Jury identified and interviewed key stakeholders involved in the negotiations. The interviews identified basic principles or restraints driving the negotiating parameters, such as the priority of providing safe water supplies over the need for recreation, the need to generate sufficient income to cover water infrastructure costs, and the need to obtain sufficient returns to maintain and improve land newly dedicated to the public. The Grand Jury reviewed information about past recreational services and solicited suggestions to expand recreational and revenue generating capabilities of the area.

Members of the Grand Jury toured Irvine Lake and all adjacent properties that are part of the negotiations and expected to be part of future OC Parks development plans. They reviewed the condition of existing improvements and issues affecting property access.

The Grand Jury reviewed multiple articles in local newspapers that provided coverage of the closing of Irvine Lake and limited coverage of the ongoing negotiations, plus material on the general background of the history of Irvine Lake and its status.

The Grand Jury reviewed existing development or redevelopment plans for the recreational facilities and services offered for Irvine Lake. These included estimates for associated costs and investments as well as expected future revenue streams. The Grand Jury reviewed existing agreements among relevant parties and their successors dating back to 1928, written communications between the parties, and limited historical financial operating information. The stakeholders also provided legal background and documentation as to the sequence that negotiations should follow to be successful.

## **BACKGROUND AND FACTS**

### **Background History**

Santiago Dam (also known as Santiago Creek Dam) is an earthen and rock filled dam across Santiago Creek within Orange County, forming Irvine Lake. The 136-foot earth dam and its reservoir primarily provide for water storage. The dam and reservoir secondarily provide recreational opportunities. It lies east of the city of Orange and north of Irvine. Irvine Lake is the largest body of fresh water entirely within Orange County.

Construction on the dam commenced in 1929 with a joint agreement by the Irvine Company and Serrano Irrigation District. After they graded the site they built the dam using dirt and rock excavated from the sides of the canyon. They completed the structure in 1931, and its reservoir, Irvine Lake, was filled by 1933. By the late 1930s, the lake had been stocked with fish. It was opened to the public for recreational use in 1941.

The dam's initial purpose was for, irrigation and municipal water use. With heavy suburban sprawl that has occurred since the 1960s, agriculture along lower Santiago Creek has been drastically reduced. Conversely, the need for water storage and distribution to urban users has increased. It is currently owned by the Irvine Ranch Water District and the Serrano Water District (the former Serrano Irrigation District). Today the dam marks the end of Santiago Creek. All the discharge is retained in the reservoir and downstream flow is limited to seepage and released storm water.<sup>1</sup>

### **History of Water Recreation**

The recreation rights to the waters of Irvine Lake were initially established under a February 6, 1928 settlement agreement between TIC, Carpenter Irrigation District and the Serrano Irrigation District, predecessor to SWD ("1928 Agreement"). The 1928 Agreement generally deals with the use of Irvine Lake as a reservoir by the parties. Over the decades, the parties to the 1928 Agreement changed as water and irrigation districts formed and dissolved. Subject to the 1928 Agreement, TIC retained 75% of the recreation rights on the water while SWD retained the remaining 25% of those rights.

Recreation rights to the water at Irvine Lake are limited by the 1928 Agreement. Such rights include fishing, hunting, boating and such other uses as will not pollute or interfere with the use of said waters by the parties, Irvine Lake functions first as a reservoir, and second as a recreational lake – and then only for recreational uses that are compatible with the functioning of

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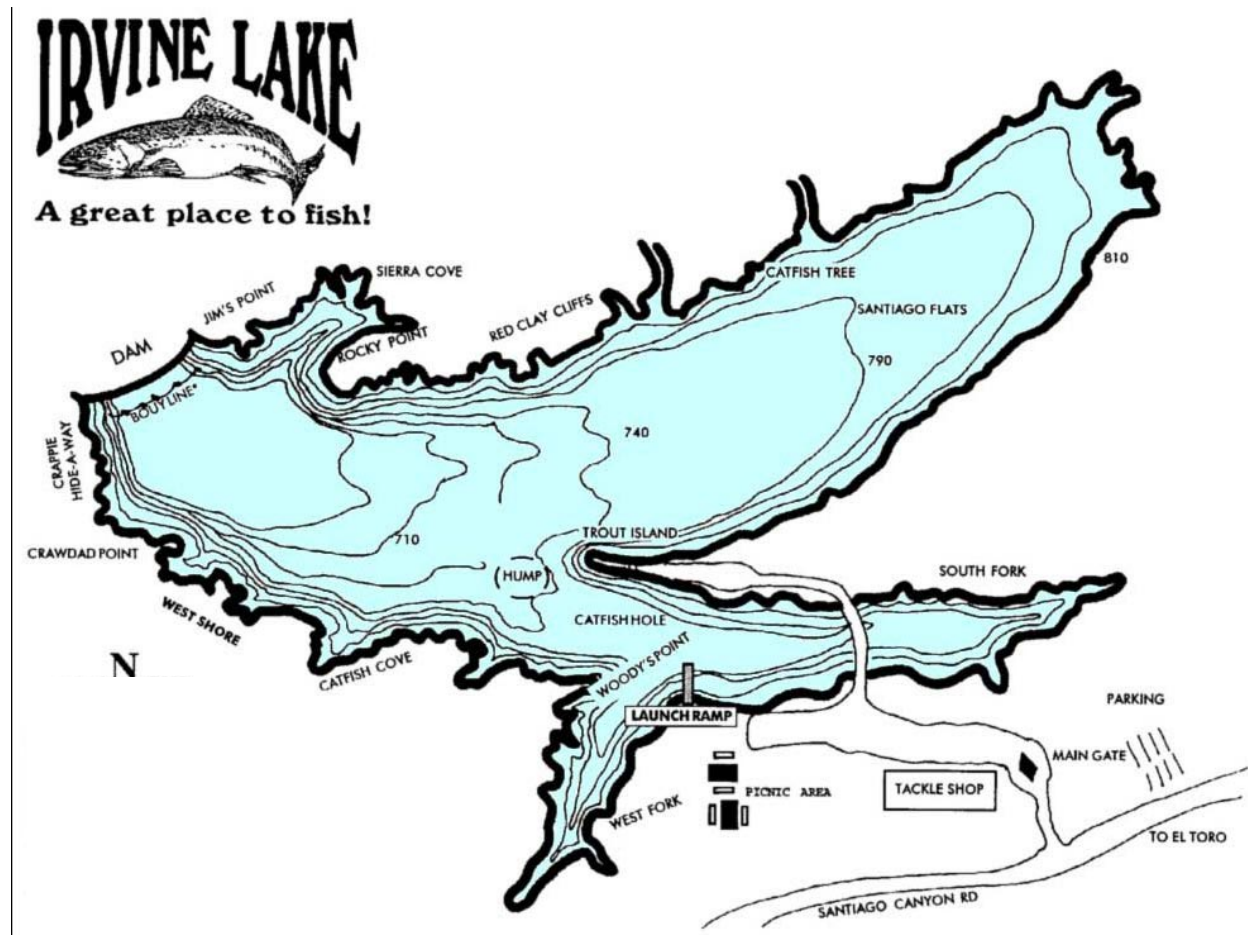
<sup>1</sup> Wikipedia, [https://en.wikipedia.org/wiki/Santiago\\_Dam](https://en.wikipedia.org/wiki/Santiago_Dam), Last Edited December 7, 2018 (Modified from the original), used, and available for reuse, pursuant to <https://creativecommons.org/licenses/by-sa/3.0/>.

the reservoir. Article Thirteen of the 1928 Agreement requires that, in order to open Irvine Lake to general public recreational use, the parties who share any interest must agree to satisfactory terms with one another.

Prior to 1993, recreational activities such as boating and fishing were facilitated by way of an informal agreement between the owners of recreation rights. A more formal agreement was drafted in 1993 between TIC and SWD (the two remaining parties with recreation rights). In addition, in 2011, TIC and SWD entered into a concurrent agreement in the form of a lease, wherein TIC leased to SWD and SWD Recreation Inc. (a wholly owned subsidiary) the land under the RV Storage facility, which provided SWD with an opportunity to operate and profit from the RV storage facility on TIC's land.

Although the types of recreational activities on the water were reduced over the years by SWD due to liability concerns (boater drownings occurred in 2012 and 2015), shoreline fishing remained open to the public until the termination of the lease and recreation rights agreement between TIC and SWD on March 31, 2016.

**Figure 1**



Source: [Irvinelake.net](http://Irvinelake.net)

## **Involvement of Orange County Parks (OC Parks)**

Prior to 2014, Orange County had no direct involvement with Irvine Lake or the surrounding property. In 2014, TIC made a donation of 2,500 acres of land to the County of Orange for park uses, including the areas on the Exhibit A Map (see Appendix) denoted as “East Orange I” and “East Orange II”. Orange County Parks Foundation, a nonprofit conservancy, holds the habitat conservation easements that govern these. In addition to the open space lands, TIC also transferred to Orange County fee title (unencumbered ownership) to the area shown on the map in orange and denoted as the “OC Parks Lease Parcel”. This parcel is a private leasehold that produces revenue to OC Parks and assists in offsetting OC Parks costs of open space management, habitat restoration, and public access improvements in lieu of a more traditional conservation endowment. The other revenue-generating parcel of land intended to offset OC Parks open space management costs, shown on the map in pink and denoted as “Irvine Company IOD (Irrevocable Offer of Dedication) to Orange County,” is the 29-acre Recreation Parcel at the entrance to the lake. It includes the RV storage facility, which TIC irrevocably offered to Orange County, but can be transferred only once certain conditions are met.

As to the recreation rights to the water, in conjunction with the 29-acre Recreation Parcel and related access roads, TIC did make an IOD to OC Parks for its 75% of the recreation rights. Effectively, the components that it offered to OC Parks can be accepted or declined at OC Parks unilateral discretion once certain conditions have been satisfied within a 90-year period. This report will address below each one of these conditions and their complexity. Only after all of these conditions are satisfied will OC Parks receive TIC’s 75% interest in the recreation rights and the Recreation Parcel. It also bears noting here that even if/when OC Parks does accept TIC’s 75% recreation rights, pursuant to the 1928 Agreement, SWD must still concur with terms of recreation management before it can permit any public recreation on Irvine Lake.

### **Memorandum of Understanding- 2003**

Pursuant to a Memorandum of Understanding dated April 30, 2003 between TIC, IRWD and SWD, the parties to the MOU are obligated to exchange access easements for the land adjacent to the lake. This has not yet occurred. OC Parks is not a party to this MOU and therefore lacks any legal standing or bargaining power over this situation. Nevertheless, unless or until those easements are agreed upon and exchanged, OC Parks cannot obtain any recreation rights to the lake water.

Additionally, the 2003 MOU stipulates that TIC may not transfer its 75% of the recreation rights unless or until SWD and IRWD agree to that transfer. To date, SWD has signified its approval to the transfer through the initiation of negotiations over the recreation management agreement with OC Parks, but IRWD has withheld its approval pending completion of a successor agreement to the 2003 MOU.

In spite of multiple contacts by OC Parks to IRWD over the past few years, it appears to the Grand Jury that OC Parks has not yet received any information from IRWD regarding the terms of any successor agreement nor its expected completion and execution date. However, the Grand Jury has learned that the execution of a successor agreement to the 2003 MOU will likely occur in the first half of 2019.

### **Conditions Needed to Satisfy Irvine Company's IOD Transferring the 29 Acre Recreational Parcel and its 75% Interest in Recreation rights**

#### **Condition #1: Water Districts Must Accept Access Easements from The Irvine Company**

IRWD and SWD must accept and record easements from TIC providing the water districts with access to the access road alongside Irvine Lake. TIC is obligated to offer the easements to satisfy the terms of the 2003 MOU. Likewise, IRWD and SWD must provide a reciprocal easement to TIC (or its successor) pursuant to the 2003 MOU and TIC must accept the easement.

#### **Condition #2: Orange County Accepts Access Road Parcel**

After Condition #1 is satisfied, Orange County must accept fee title to the Access Road Parcel within a certain period. (Currently, OC Parks has an easement over the Access Road Parcel, which provides access to the Oak Canyon Park/concessionaire lease parcel.)

#### **Condition #3: IRWD Consents for Transfer of Recreation rights**

IRWD must provide its consent for TIC to transfer its 75% recreation rights to OC Parks. SWD has already indicated its willingness to consent, assuming completion of a recreation management agreement or buyout with OC Parks. This item can take place at any time; however, the IOD considers IRWD's consent to be a condition precedent to Condition #4 below.

#### **Condition #4: Orange County Accepts 29 Acre Recreation Parcel & Recreation Rights Transferred to Orange County (2 Options)**

After Conditions #1-#3 are satisfied, OC Parks may accept the Recreation Parcel and is then eligible to receive TIC's 75% of the recreation rights to the water if:

1. SWD agrees to transfer its 25% of the recreation rights to OC Parks (buyout);  
**or**
2. SWD and OC Parks enter into a management agreement for the recreation rights, which could include sharing of the profits generated from water-based recreation.



Even if these conditions are satisfied and OC Parks obtains the ability to use the water for public recreational activities, the geographic conditions at the lake may hinder OC Parks ability to do so. For example, the lakebed is much larger than the current body of water. Thus, OC Parks will still lack access over the lakebed to provide direct access to the water for recreational activities. At that point, OC Parks, IRWD, and SWD may need to negotiate additional agreements (*e.g.* license, permit, or easement) to grant OC Parks access to the dry lakebed for recreation-serving uses such as launch ramps for rental and/or private fishing boats, vehicle access, lakeshore fishing, etc.

## **Current Ownership and Control**

The ownership, control, use, and rights to Irvine Lake and the surrounding area are complex. To facilitate the reader's understanding, please refer to attached map included as Appendix A from the OC Parks website, showing the various properties and the interests, summarized below:

1. TIC owns:
  - a. the 29-acre "Recreation Parcel" including the RV storage lot and the public entrance to Irvine Lake (shown in pink on the attached map);
  - b. the access road from Santiago Canyon Road to the back of the reservoir, including portions of Blue Diamond Haul Road (shown in yellow on the attached map); and
  - c. 75% of the recreation surface rights to the water of Irvine Lake
2. Orange County owns:
  - a. the Oak Canyon Park/Concessionaire lease parcel (shown in orange on the attached map);
  - b. easement rights over the access road to reach the Oak Canyon parcel; and
  - c. the majority of the open space surrounding Irvine Lake
3. SWD owns:
  - a. the lakebed and the water of Irvine Lake (including determining the permitted uses on the water) – owned jointly with IRWD
  - b. 25% of the recreation surface rights to the water of Irvine Lake
4. IRWD owns:
  - a. the lakebed and the water of Irvine Lake (including determining the permitted uses on the water) – owned jointly with SWD

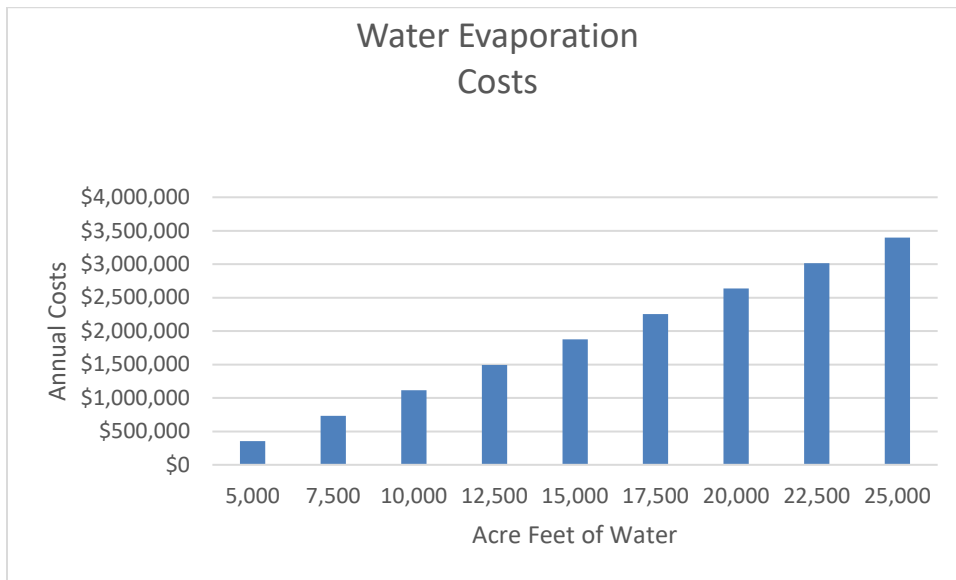
Although SWD owns only a minority share of the recreation rights to the water, the public may not exercise any recreation rights unless all parties agree to such uses per the controlling agreement. In other words, SWD may withhold permission and thereby prohibit TIC (or TIC's successor-in-interest) from offering public use of the recreation rights despite its majority share of the recreation rights.

## **The Impact of Water Levels at Irvine Lake**

Irvine Lake experiences wide fluctuations in the water level as a storage facility for the water districts. SWD estimated the Irvine Lake surface area to be 2,700-acre feet as of January 2019. This water level reflects several years of drought and SWD considers it the minimum level at which to operate the outlet towers and other pump facilities. The water districts would need to purchase water from the Metropolitan Water District to raise the water level other than by precipitation runoff directly or from the upstream water flow from Santiago Creek. MWD imports water from the Colorado River and Central California Aqueduct. The MWD water does not greatly influence the watershed for the majority of Orange County (generally north of El

Toro) that receives roughly 80% of its water from the underlying aquifer. When purchasing the water for storage the water districts must account for the cost of the water lost to surface evaporation. This is relatively predictable, based on annual weather patterns, the cost of water and surface area exposed to evaporation. Those cost estimates for Irvine Lake by surface area exposed would be:

Graph 1:



Source: Data provided by Serrano Water District

As the chart indicates, the annual costs of water evaporation to the water districts is significant, particularly as the surface area approaches a maximum size for Irvine Lake of 25,000-acre feet. Even at lower lake levels of 10,000-acre feet (four times the current surface area), the annual cost would be close to \$1 million. In summary, the larger the surface area of the lake becomes, the more the evaporation and water replacement costs increase. Notably, the cost of water replacement varies by season. The price of purchase water goes down when water from natural precipitation is higher, and water is more plentiful. Conversely, during times when natural precipitation is scarce, water is costlier.

The nature of planning recreation around a man-made lake would be much easier if wide fluctuations in water level could be moderated. Involved entities consider maximum water levels so that permanent facility areas are not lost when water level increases. Additionally, they can improve access to the lake if water levels are predictable and do not fall below a certain level. They can manage this with floating and moveable dock systems and moveable structures. If they could maintain Irvine Lake at a minimum level, for example 10,000-acre feet, even in years when naturally occurring runoff would result in lower lake levels, recreational experiences would be easier to plan and more esthetically pleasing. At that level of water, the costs to the water districts, up to \$1 million, could occur in certain years or multiple years. Without a way to offset those

costs there would be little incentive for the water districts to maintain Irvine Lake at that higher water level.

At the current level of income generated from recreation surrounding Irvine Lake, accruing to either OC Parks or SWD, there is little ability to offset much increase in evaporation costs and still generate income for the primary purposes of covering water infrastructure costs or restoration and maintenance of new OC Parks' open space. However, this relationship could change if the entities expand recreation at Irvine Lake and recreation income increases. In the future, to reduce Orange County's need to purchase water from outside sources, the water districts may seek to expand water storage capacity at various reservoirs, including Irvine Lake. This could also be a source of cost offset.

### **Lack of Formal Planning by Local Government Agencies for Irvine Lake**

Since 1928, TIC has managed recreation around Irvine Lake, with SWD's role increasing gradually over time. Both entities, by nature and mission, primarily focus on their core businesses of real estate development (TIC) and water delivery (SWD). In 1993, when TIC felt recreation was not receiving appropriate attention it entered into an agreement with SWD to increase the focus on viable water-based recreation. The size of Irvine Lake and its location in an increasingly urbanized area contributed to the success of selected recreation.

As part of its investigation, the Grand Jury requested from all three local government agencies any planning documents or feasibility assessments conducted for Irvine Lake and found that no planning reports or studies exist. Given the recent TIC land donation and the new and anticipated role of OC Parks going forward, the lack of planning or feasibility studies for an asset of this size and significance within Orange County is inconsistent with OC Parks' general practices.

Future planning activities and documents typically would involve public focus groups and interviews with interested stakeholders. Issues could include the types and location of land-based recreation given the limited land areas involved, access to the lake and connecting roads. Planners could identify locations for future expansion opportunities. Operational models for recreation other than direct management by OC Parks could include public/private partnership or leases that would reduce needed public investment and provide business opportunities for local business people. Restrictions governing permitted activities on or near the water, based on the need for preservation of water quality, would prohibit certain recreation. Likewise, concerns for public safety and operator liability related to past boating operations at Irvine Lake (speed boating, private boating, or boating rentals) will need to be considered.

## Parameters of Negotiation

### *Intended Use of Revenues from Recreation Activities and Donated Land Parcels*

SWD historically has applied all revenue from the water-based recreational activities to offset costs associated with the maintenance, repair and replacement of the dam and lake infrastructure. As co-owner of the land under Irvine Lake and the water rights, SWD shares the infrastructure costs with IRWD on a 25% (SWD)-75% (IRWD) basis. SWD is a small water district relative to IRWD with approximately 6,500 households served, compared to IRWD's 110,000+ households. SWD's customer base is relatively stable, consisting of a largely fully developed area around the cities of Villa Park and parts of Orange.

The water ratepayers of SWD and IRWD currently fund 100% of all dam maintenance costs. In addition, two large, necessary capital projects appear on the near horizon. Nobody has yet estimated the cost of these projects, but they have the potential to be quite high. By way of example only, to cover a potential one-time capital investment of \$50 million on a shared 25%-75% basis roughly would translate to \$1,900 for every SWD ratepayer and \$340 for every IRWD ratepayer. Therefore, finding an alternative way to fund capital projects may prove more critical for SWD.

OC Parks intends to use the revenue generated from water-based recreation plus the lease income from the two land-based parcels that TIC intends to transfer to OC Parks to assist in offsetting OC Parks' costs of habitat restoration, open space management and public access improvements; this is in lieu of a more traditional conservation endowment. The initial rough estimate of the costs of habitat restoration, trail construction and maintenance, and improvements needed for public access is in the range of \$5 million. The estimate is for the roughly 2,500 acres identified on Exhibit 1 as OC Parks East Orange I and II.

### *Historic Operation of Recreation at Irvine Lake and its Impact on Negotiations*

Since recreation first opened to the public in 1941, the recreational activities at Irvine Lake have consisted of water-based and land-based activities

The definition of water-based recreational activities in Section 4 of the 1993 Recreation Rights Agreement between TIC and SWD, reads as follows:

“TIC and SID (SWD) agree that the Recreation Rights give them jointly through the Manager the exclusive right to do the following things within the boundary of the Reservoir (the “Recreational Activities”):

- A. The right to use, permit the public to use or grant concessions for the public to use the Reservoir and all boats and related equipment, piers, floats, boat landings, buildings, structures and other improvements located within the Reservoir for:

- a. Fishing and other uses incidental to fishing, including the rental, repair and use of fishing boats, and the rental or sale of fishing tackle, bait and other equipment and supplies;
  - b. Boating and other uses incidental to boating, including the rental, use and sale of boats and all boating accessories and equipment and the use and sale of fuel and supplies;
  - c. Such other amusements and recreation activities as will not impair the use of the waters of the Reservoir by SID and IRWD; and
  - d. The right to stock the waters of the Reservoir with fish and maintain the same therein.
- B. The right to erect, place and maintain within the boundary of the Reservoir such buildings, structures, improvements and equipment as may be necessary or convenient for the uses and purposes herein specified, subject to the provisions hereof (the “Recreation Structures”)
- C. The right to sell food, refreshments, merchandise and other items to the public.
- D. The right to rent equipment and other items associated with the Recreational Activities to the public.”<sup>2</sup>

<sup>2</sup> Recreation Rights Agreement, Dated June 30, 1993, between Serrano Irrigation District and The Irvine Company

Land-based recreation has occurred on two land parcels adjacent to Irvine Lake and owned by TIC. The map included in Exhibit 1 identifies the two parcels where recreation has occurred, the orange and the pink parcel. A private concessionaire under a License Agreement (Concession Agreement) in place since 1993, has managed the recreation on the orange parcel. The concessionaire is responsible for constructing and maintaining improvements to conduct its business, providing insurance and indemnifying TIC against all liability associated with the operations. Permitted uses are generally defined as private corporate events, car clubs, some limited concert events, scout jamborees, carnival rides, day camping and picnic areas. Overnight camping and most motor sports are prohibited. Activities added over the years include mountain bike courses, “mud racing,” various sports events, radio controlled aircraft and drone flying. The orange parcel was transferred to OC Parks in 2015. The Concession Agreement remains on holdover status, pending a longer-term agreement with OC Parks.

The pink parcel includes the general public entrance to Irvine Lake, improvements related to fishing and boat rental (both currently closed), and a paved, secured RV and boat storage area. In 2011, TIC entered into a lease with SWD to operate the RV and boat storage area, in addition to its responsibilities for operating “water-based” recreation. That lease was terminated in 2016, along with the Recreation Rights Agreement. TIC continues to operate the RV and boat storage, pending transfer to OC Parks.

#### *Historic Operating Revenues and Profits from Recreation at Irvine Lake*

Review of lease and management documents, interviews with lessors and lessees, and a limited review of accounting information, provide some general trends for recreation operations at Irvine Lake. The Concession Agreement has a minimum rent of \$120,000 annually, plus a share of gross revenues. Total annual income generated in recent years was in the estimated range of \$350,000-\$400,000. The Grand Jury has learned annual revenue from the RV and boat storage area is estimated to be in the range of \$375,000-\$400,000. TIC has recently expanded the storage area and anticipates continued strong demand for this type of storage; therefore, revenues could possibly increase. Many have described the location of the storage area near the main entrance to Irvine Lake as an eyesore. Overall master planning might entail relocating the storage area, and reducing the size of the storage area may result. Nonetheless, the demand for such use is strong.

A review of limited accounting records for water-based recreation indicates income from fishing (including entrance fees), boating rental and equipment rentals, as well as food and other sales, generating a positive net income of an estimated \$125,000-\$350,000 annually. Net income from water-based recreation is shared between TIC (75%) and SWD (25%), until OC Parks fully takes over from TIC (and becomes the 75% shareholder) and unless a purchase of SWD’s interest occurs. A general decline in net income from water-based recreation during the period from 2011-2016 was a result of declining boat and fishing revenues following two separate boating accidents

and drownings in 2012 and 2015. These resulted in increased insurance costs for the operator and resulted in a suspension of boating on Irvine Lake in 2015.

If boating and fishing could be restored to past levels, it would appear, based on prior history, that the water-based along with the two land-based recreation operations would produce net income in roughly the historical amounts. However, future income could be substantially different, based on OC Parks' involvement, new capital investments, and limited comparable recreation sites in an increasingly urbanized Orange County.

### *Chronology of Negotiations*

Orange County became aware in 2014 of TIC's plans to transfer the 2,500 acres of open space. In 2015 OC Parks first approached SWD regarding its interest in purchasing SWD's 25% interest in the water-based recreation rights. SWD initially indicated an interest in this buyout in exchange for a shorter term no fee (no rent) operation of the RV Storage parcel which it had been operating for TIC and some unspecified ongoing participation in a percentage of other recreational income at Irvine Lake.

In September of 2015, TIC notified SWD of its intent to terminate both the Recreation Rights Agreement and the RV Storage lease effective March 31, 2016. SWD requested a six-month extension to the RV Storage lease to allow time to negotiate an agreement with OC Parks to continue to manage the RV Storage operation. In early 2016, OC Parks offered a buyout based on a two year no fee lease of the RV Storage with a market rate lease thereafter. In February of 2016, SWD revised its offer to sell its water-based recreation rights, and instead offered an unusual lease-like arrangement for those rights in return for a minimum annual payment of \$400,000, or a no fee long-term lease for the RV Storage area. TIC soon thereafter denied SWD's request for an extension of the RV Storage lease, basing its decision on the two parties (SWD and OC Parks) being too far apart on terms.

After February 2016, there were no more written counteroffers from either OC Parks or SWD regarding SWD's recreation rights. The Grand Jury learned that OC Parks did request financial operation information on the water-based recreation in order to evaluate the last offer made by SWD. The Grand Jury has determined that OC Parks has yet to receive this information.

As OC Parks consummated the transfer of the orange-colored Recreation Parcel, it investigated the conditions needed to achieve the remaining transfer of the IOD parcel and the recreation rights. It became clear that the negotiation of recreation rights with SWD could not occur prior to satisfying the IOD conditions, which in turn requires a modification or successor document to the 2003 MOU.

OC Parks is not party to the 2003 MOU document and cannot directly influence negotiations. The primary parties are the two water districts and TIC. Neither of the water districts has provided a progress report to OC Parks as to how those negotiations are progressing or what, if any, contract points are critical. The Grand Jury has learned that there is some level of confidence that the



MOU agreement could be signed within the first half of 2019. Only following that agreement could all the conditions of the IOD be satisfied.

The last documented communication between OC Parks and SWD regarding recreation rights occurred in the summer of 2017. OC Parks offered to enter into a short-term agreement to permit shore fishing at Irvine Lake. All costs and liability would be borne by OC Parks. OC Parks would share with SWD any net income generated. OC Parks agreed to allow some fishing at Irvine Lake while negotiations continued. SWD did not want to consider a short-term arrangement.

### *Negotiation Observations*

OC Parks is concerned about offering relatively certain land-based income targeted for public land restoration without knowing what it is getting in return. The only source of funding to restore and maintain for public benefit the 2,500 acres of open land surrounding Irvine Lake would be the income generated from the property and recreation rights transferred by TIC.

Negotiations have been delayed due to the need to revise the 2003 MOU as well as resolving the easement and other rights. This needs to occur prior to finalizing the final transfer of the rights included in TIC's IOD. The primary focus of both water districts is the delivery of water and maintaining the water delivery systems, not recreation.

SWD's initial negotiation strategy appears to seek a price premium to buy out its recreation rights. This strategy is common when negotiations involved fractional or shared ownership. The current agreements do not contain provisions to resolve buy-sell disagreements involving fractional ownership.

Given OC Parks' financial constraints, OC Parks cannot proceed in the absence of financial information regarding expected operating profits from water-based recreation. A continued impasse on the water-based recreation rights will deny both parties its share of potential income, and more importantly continue the delay of the reopening of water recreation at Irvine Lake to the public.

OC Parks does have the option of pursuing a separation of the IOD terms with TIC to allow for the settlement of all issues within the IOD other than the transfer of its 75% interest in recreation rights. This would settle the required access easements and allow OC Parks to take over ownership and management of the RV Storage parcel.

If SWD and OC Parks cannot agree on a buyout figure, they could enter into a management agreement to allow for continued water recreation and a split of net income on a negotiated basis. This would allow OC Parks to begin overall recreation planning at Irvine Lake making water recreation available to the public. A lease of SWD's recreation rights on terms other than in proportion to its current ownership interest may not make economic sense, particularly in the absence of compelling financial information.

## **FINDINGS**

In accordance with *California Penal Code* Sections 933 and 933.05, the 2018-2019 Grand Jury requires (or as noted, requests) responses from each agency or special district affected by the Findings presented in this section. The Responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation, titled “Re-Opening Irvine Lake- A Win-Win for Taxpayers and Outdoor Enthusiasts,” the 2018-2019 Orange County Grand Jury has arrived at seven principal Findings:

**F1.** In the past SWD has used revenue from its recreation rights as one of its sources to offset costs for maintenance and replacement of capital investments in water infrastructure.

**F2.** For OC Parks the revenue from rights and property assigned by TIC will be the source to cover costs associated with the restoration, maintenance and repairs of the newly- dedicated open space.

**F3.** Without sufficient historical financial information from SWD, OC Parks cannot project future financial opportunities at Irvine Lake.

**F4.** Minimal effort to engage one another, a lack of creative proposals and slow responsiveness between OC Parks and the water districts have allowed negotiations to stall.

**F5.** Although not a party to any recreation rights, IRWD does have a right of approval over decisions affecting water use rights and water quality. Therefore, settling easement rights issues in a successor document to the 2003 Memorandum of Understanding (MOU) among SWD, IRWD and TIC is required prior to concluding negotiations on recreation rights. Parties expect to complete this in the first half of 2019.

**F6.** SWD, OC Parks and IRWD acknowledge that to maximize recreational opportunities a more stable Irvine Lake water level is desirable.

**F7.** A master plan for recreational activities remains to be developed.

## RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2018-2019 Grand Jury requires (or as noted, requests) Responses from each agency or special district affected by the Recommendations presented in this section. The Responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Re-Opening Irvine Lake- A Win-Win for Taxpayers and Outdoor Enthusiasts,” the 2018-2019 Orange County Grand Jury makes six Recommendations:

**R1.** If an impasse still exists between SWD and OC Parks on basic terms of water-based recreation rights the parties should use a neutral outside resource such as solution focused good faith mediation by September 30, 2019, to achieve resolution. **(F1, F2, F3 & F6)**

**R2.** If an impasse still exists between SWD and OC Parks on basic terms of water-based recreation rights OC Parks should, by September 30, 2019, request from TIC a separation of those rights described in the IOD from the remaining road parcels, easements and Recreation Land Parcel and a transfer of all but the water recreation rights to OC Parks. **(F1, F2, F3 & F6)**

**R3.** By September 30, 2019, SWD should provide full financial disclosure of historical operating information for water-based recreational activity, at a minimum for the period 2011-2016, in sufficient detail to allow OC Parks to evaluate any recreation rights buyout offer or other specific management proposal. Absent such information, SWD and OC Parks should negotiate and present to their respective governing bodies a management agreement to continue operating water-based recreation at Irvine Lake and share revenue, expenses and net profits **(F3)**

**R4.** If by December 31, 2019 resolution has not been reached as to the reopening of Irvine Lake for water recreation, staff for SWD, IRWD, and OC Parks should post on their respective websites and submit to their governing body for discussion in a public meeting their perspective as to the obstacles to reopening the lake and what plan they have to resolve the issue. **(F4)**

**R5.** By December 31, 2019, SWD, IRWD and OC Parks should explore the economic feasibility of establishing and maintaining Irvine Lake at a minimum water level based on expected income and other potential cost offsets. **(F5 & F6)**

**R6.** By March 31, 2020, once recreation rights are determined, OC Parks should hold open public planning meetings to address possible uses and activities, and their location at Irvine Lake, that result in the development of a multi-year Recreational Master Plan. This planning would include examining other public/private models within Orange County and Southern California for covering future capital costs and minimizing any liability associated with boating. This also would include general cost benefit or financial feasibility analysis for the recreational uses under consideration. **(F7)**

## RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the findings and recommendations of this Grand Jury report:

### §933(c)

*“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. . . .” §933.05*

*“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:*

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

*(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:*

- (1) The recommendation has been implemented, with a summary regarding the implemented action.*
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*

*(c) However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the*

*agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.”*

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

**Responses Required:**

OC Parks responds to Findings 1-7 and Recommendations 1-6

SWD responds to Findings 1-6 and Recommendations 1-5

IRWD responds to Findings 4-6 Recommendation 4 and 5

**Responses Requested:**

TIC responds to Recommendation 2

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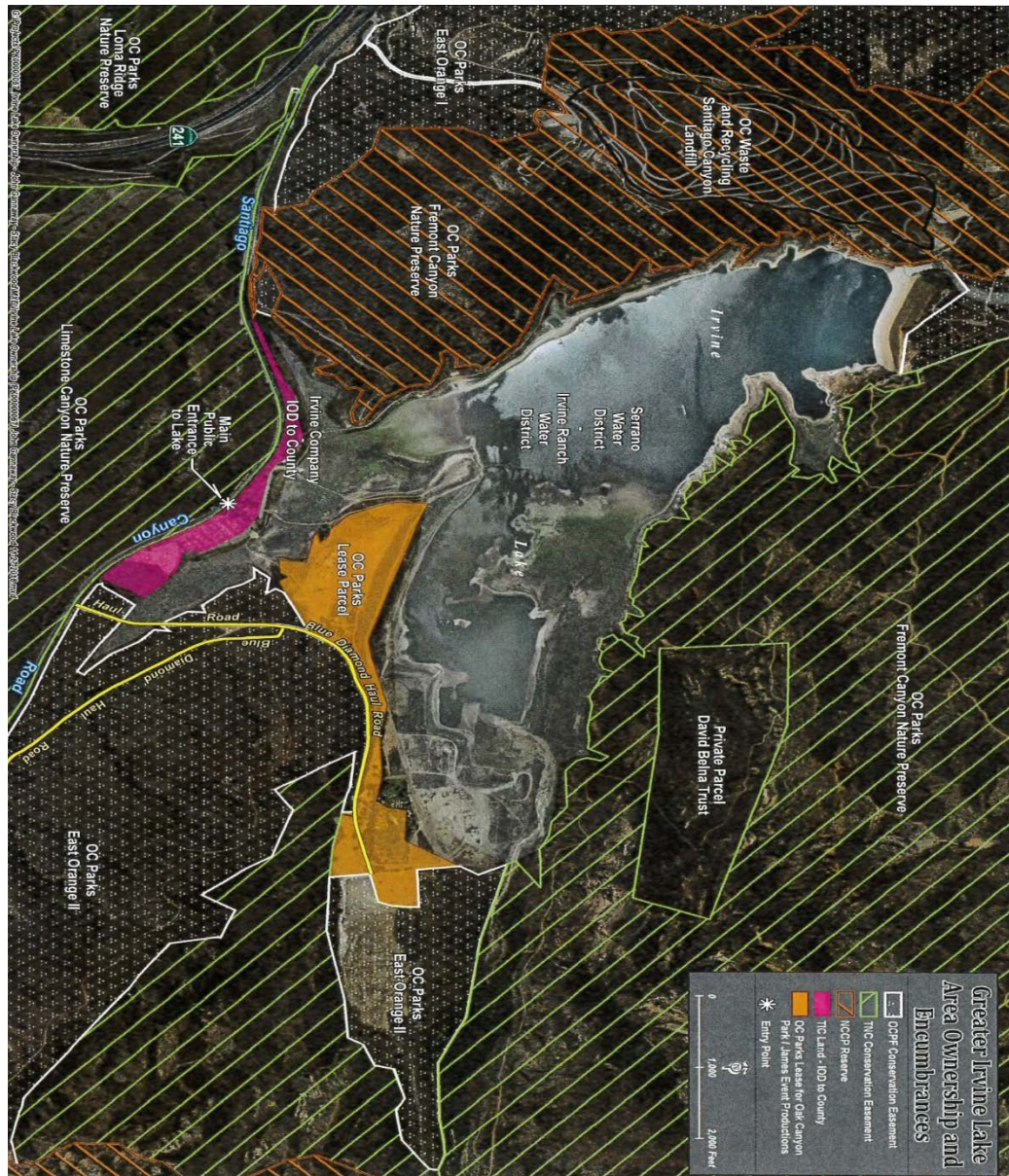
## APPENDICES

Appendix A- Map of Greater Irvine Lake Area Ownership and Encumbrances

Appendix B – Current photos of Irvine Lake

Appendix C- Web link to photos of Irvine Lake prior to closure

### Appendix A



Source: OCParks website

## Appendix B - Current Water-based Recreation Conditions

### Main Entrance to Irvine Lake



Source: 2018-2019 Grand Jury



Source: 2018-2019 Grand Jury



Source: 2018-2019 Grand Jury



Source: 2018-2019 Grand Jury

Temporary Building for Fishing and RV Management



Source: 2018-2019 Grand Jury

**Appendix C- Web link to Photos of Past Recreation Activities**

<https://www.google.com/search?q=irvine+lake+photos&tbm=isch&source=hp&sa=X&ved=2ahUKEwj8jJCe5ubhAhXCrJ4KHaaXCsUQsAR6BAgJEAE&biw=1600&bih=805>